IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.725 OF 1992

Suresh Eknath Kale,)
age 41, Occupation - Business,)
of 1150/A, 'E', Kolhapur.).. Petitioner

Vs.

Dattatraya Tukaram Kapade,)
since deceased through his legal)
heirs:)

(A) Vijay Dattatraya Kapade,)
age 50, Occupation-Business,)
of 1150, 'E', Kolhapur.)

(B) Anil Dattatraya Kapade,)
age 47, Occupation and)
resident as above.)

(C) Prakash Dattatraya Kapade,)
age 42, Occupation and)
resident as above.)

(D) Mrs.Mangala Shivraj Patil,)
age 38, Occupation- Household,)
of Near Vyapar Bhavan,)
1st Lane, Shahupuri,)
Kolhapur.).. Respondents

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Shri S.V.Sadavarte for the petitioner.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 14TH NOVEMBER, 2005.

ORAL JUDGMENT:

1. Heard Shri Sadavarte, the learned advocate for the petitioner. None present for the respondents.

Perused the records.

2. The present petition arises from the judgment and order dated 12th December, 1991 passed in Misc.Civil Appeal No.1 of 1990 as also against the order dated 2nd September, 1989 passed by the Civil Judge, Junior Division, Kolhapur, in Misc. Civil Application No.39 of 1983.

3. The respondent herein filed the suit for eviction of the petitioner from the tenanted premises situate at Kolhapur on the ground of failure to pay the rent since April, 1978 even after repeated demands, and that the petitioner was in arrears of rent for more than six months on the day of filing of the suit. The trial Court, after issuing the notice and after considering the evidence led by the respondent and on account of failure on the part of the petitioner to establish the contention regarding payment of arrears, held that the respondent had proved that the petitioner had not paid rent for more than six months and was a defaulter, and therefore, was liable to be evicted. It was also held that the amount of Rs.225/- per month was the standard rent and there was a valid legal notice issued to the petitioner before initiating the eviction proceedings.

It was also held that inspite of the fair opportunity being given to the petitioner, he failed to deposit rent within the prescribed period. Consequently, the eviction order came to be issued. Thereafter, the application was filed for setting aside the said decree on the ground that the same was ex parte decree. The trial Court after hearing the parties rejected the said application by an order dated 2nd September, 1989 holding that the petitioner failed to establish that he was diligent in defending the proceedings in as much as that even after the petitioner's advocate informed him about his inability to appear in the matter on account of he being appointed as A.P.P., no steps have been taken to engage another advocate or to defend himself in the matter, and also there was failure to pay arrears of rent within the prescribed time even during the pendency of the proceedings.

4. Perusal of the impugned orders discloses that the trial court on detail analysis of the evidence led by the respondent has arrived at a finding regarding the amount of Rs.225/- per month to be the standard rent and that there was a valid notice issued to the petitioner demanding the arrears of rent and yet there was failure on the part of the petitioner to clear the

arrears of rent within the prescribed period and further that there was default in payment of rent for more than six months without any sufficient cause and there was continuous default in payment of rent even during the pendency of the proceedings for eviction. These findings have been arrived at based on the evidence led by the party and the petitioner has not been able to disclose any sort of perversity in those findings nor those findings can be said to be contrary to the materials on record.

5. As regards the order of setting aside the decree on the analysis of the evidence led by the parties as revealed from the discussion in that regard in the impugned order, the contention of the petitioner was that his advocate had failed to defend the proceedings effectively and on that count, the petitioner should not be penalised. However, the materials on record revealed that the advocate for the petitioner had clearly informed the petitioner in due time his inability to appear in the matter, and therefore, there was a necessity to engage another advocate to defend the case of the petitioner and yet the petitioner did not take any step to engage another advocate. Undisputedly, the advocate appearing for the petitioner was appointed as A.P.P. and was not

able to continue to appear for the petitioner in the matter and this was to the knowledge of the petitioner, apart from the fact that the said advocate had informed the said fact to the petitioner. That apart, the petitioner also failed to take step to pay arrears of rent within the prescribed period and further continued to commit default in payment of rent even during the pendency of the proceedings.

6. The findings which have been arrived at are based on the materials on record and do not disclose any sort of perversity and illegality in exercise of jurisdiction by the Courts below and the impugned orders have been passed on detail analysis on the materials on record on proper application of mind by the Courts below. Hence, I do not find any reason to interfere in the impugned orders. The petition is therefore liable to be dismissed and accordingly is hereby dismissed. Rule discharged with no order as to costs. Interim relief stands vacated.

(R.M.S.KHANDEPARKAR, J)